

TRANSCRIPT OF PROCEEDINGS BEFORE
 THE SENATE OF THE STATE OF TEXAS
 EIGHTY-FIRST LEGISLATURE
 (COMMITTEE OF THE WHOLE SENATE)
 AUSTIN, TEXAS

IN RE: §
 CONSIDERATION OF §
 SENATE BILL 362 §

COMMITTEE OF THE WHOLE SENATE

TUESDAY, MARCH 10, 2009

BE IT REMEMBERED THAT AT 12:38 p.m., on Tuesday, the 10th day of March 2009, the above-entitled matter was heard at the Texas State Capitol Senate Chamber, Austin, Texas, before the Committee of the Whole Senate; and the following proceedings were reported by Aloma J. Kennedy, a Certified Shorthand Reporter of:

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1 process.

2 So with that said, please know that
3 whatever deliberations and whatever bills you pass
4 related to elections, we look forward to working with
5 you and helping you to -- helping you in terms of
6 implementing the bills that you pass.

7 With that, I would ask that since I am a
8 resource, that I'm here to answer questions. We also
9 have, Mr. Chairman, our General Counsel John Sepehri
10 here to answer questions as well, but we are open now
11 to any questions we may -- you may have for us today,
12 this morning.

13 QUESTIONS FROM SENATE FLOOR

14 SEN. DUNCAN: The Chair recognizes
15 Sen. Fraser.

16 SEN. FRASER: Deputy Secretary Shorter,
17 thank you for being here. We -- it doesn't escape us
18 that you've been sitting over here since ten o'clock
19 this morning being available to this body. And as
20 someone that serves the state, we appreciate you being
21 here.

22 The questions that I have today for you
23 are -- I think I want some clarification, making sure
24 that the bill that I'm laying out that I am
25 understanding correctly the interpretation of someone

1 that fills out an application, sends it in, receives a
2 registration card and then takes that registration
3 card and attempts to vote with that.

4 MR. SHORTER: Yes, sir.

5 SEN. FRASER: And I guess the first
6 question I would have is the election code is under
7 Chapter 63 and, in fact, the start of that is
8 Section 63.001, the Regular Procedure for Accepting a
9 Voter. Do you happen to have that --

10 MR. SHORTER: Yes, sir, I do.

11 SEN. FRASER: -- that law in front of
12 you? And I would ask you -- if possible I'd like to
13 walk through and make sure I understand the Texas law
14 and what provides for the ability for someone to vote.

15 Here in my hand I have the voter
16 registration card that I believe that is issued. Is
17 that correct? It is issued to a voter. It looks like
18 it is mailed out, and this would be the card that I
19 would use when I would walk into the --

20 MR. SHORTER: Senator, that does appear
21 to be our voter registration card.

22 SEN. FRASER: And it looks like -- it
23 says "Except as otherwise provided, acceptance of
24 voters shall be conducted as provided" under this
25 section. "(b) On offering to vote, a voter must

1 present the voter's voter registration certificate to
2 an election officer at the polling place." So it
3 appears to me that if I walk in a polling place and I
4 take this voting card and I show it to the person at
5 the polling place, the first thing they're going to do
6 is accept this card that I'm offering.

7 MR. SHORTER: That is correct, sir.

8 SEN. FRASER: Okay. "(c) On
9 presentation of a registration certificate, an
10 election officer shall determine whether the voter's
11 name is on the registration certificate is on the list
12 of registered voters for the precinct." So I'm
13 assuming that after I hand him the card, if I remember
14 correctly, they've got a list in front them, they look
15 and find my name on the list, they look at my address
16 and they determine am I voting in the right precinct.
17 I think -- is that what they're looking for?

18 MR. SHORTER: Yes, sir.

19 SEN. FRASER: Okay. "(d) If the voter's
20 name on the precinct list of registered voters, the
21 voter shall be accepted for voting."

22 MR. SHORTER: That is correct.

23 SEN. FRASER: Now, is that what happens?

24 MR. SHORTER: Yes, sir, that is the --
25 what it's going to say on that.

1 SEN. FRASER: Okay. I want to clarify.
2 On this card, there's several other things on the
3 card. One of them is, it has date of birth. Now, is
4 the person that I'm giving this to looking at that
5 date of birth, and has it been reflected in state law
6 that that's something they check?

7 MR. SHORTER: According to state law
8 right now, as it is written now, date of birth is not
9 something that is checked.

10 SEN. FRASER: On this card, it has an
11 area for my sex. We've had a lot of fun today with
12 the sex change argument, but on the card it says that
13 there is a registration for someone's sex. My card
14 says "male," and I put it there. Is that something
15 when I hand this card to the registration person that
16 they would be verifying on the card?

17 MR. SHORTER: They would not be
18 verifying it under current law.

19 SEN. FRASER: Okay. So let me -- let me
20 make sure I understand the way this works. I have a
21 card in my possession. I walk in and I give this to
22 the person. They look at the list, they determine I'm
23 in the right precinct. If I'm on the list and I'm in
24 the right precinct, they hand me my card back, and
25 they hand me a ballot, and I go over and vote. Is

1 that correct?

2 MR. SHORTER: Yes, sir.

3 SEN. FRASER: Okay. Well, I'm a little
4 confused about how -- what could happen because let me
5 continue this questioning here. I live in Horseshoe
6 Bay, Texas. It is a small community, a retirement
7 community, which by the way, most of them are AARP
8 members. And the retirement people there that still
9 are going to vote, when they walk in, the people in
10 the polling place, they know me as their Senator. And
11 if I walked in and I brought my voting card and I put
12 it in, they'd say "Senator, it's good to have you
13 today," and I would register and I would vote and then
14 I would walk back out to my car.

15 But what would happen after I voted
16 that -- in my car I had my brother Steve's voter
17 registration card, and I walked back into that polling
18 place that I just left and I laid Steve Fraser's
19 voting card down and said "I'm here to vote." Now,
20 the registrar probably would say "Well, Senator, you
21 were just here, and you just voted." And I said "No,
22 I'm Steve Fraser. I'm his twin brother. I'd like to
23 vote." What authorization under state law does that
24 polling place person have to tell me that I am not
25 authorized to vote?

1 MR. SHORTER: Under current state law,
2 there is no authorization to prevent that polling
3 person from --

4 SEN. FRASER: So if I present my
5 brother's card and even though they know or they
6 suspect -- greatly suspect that I am not Steve Fraser,
7 do they have the authorization under state law to stop
8 me from voting?

13 SEN. FRASER: Okay. Let me -- let me
14 carry it a step further. Let's say that I'm not in
15 Horseshoe Bay. I'm in Houston, Texas. And in
16 Houston, Texas if I was voting, probably they wouldn't
17 have any idea who I was. And I walked in the voting
18 booth and I didn't have my card or my brother's card,
19 I had my wife Linda's card, and I went in to vote.
20 And my name -- Linda Fraser's name was on the list in
21 the precinct. They would check and see if her name
22 was there, and they would check the address, and I'm
23 in the right place, would they hand me a ballot and
24 allow me to vote? Is there anything under state law
25 that they would check the person verifying the -- you

1 know, that I'm not Linda Fraser in that? Is there
2 anything under state law that would cause them or
3 allow them not to allow me to vote?

4 MR. SHORTER: Senator, under these
5 provisions of the law as they are, there are no
6 provisions that would prevent that.

7 SEN. FRASER: Okay. Let's carry it a
8 step further. There was a case that was represented
9 to me this week -- there have been a lot of these now
10 that we've been working on this -- this happened in
11 Plano. A poll worker in Plano had a lady came in,
12 bright red hair, big blue hat, feathers on the hat,
13 one of those people you would remember when they came
14 in. She voted. An hour later she came back in with
15 somebody else's registration card, went down to the
16 next poll person and was registering to vote.

17 The person she just voted with went to
18 the election judge and said "This person was just
19 here. They just voted. She's trying to vote again,"
20 and the election judge told them "I'm sorry. We have
21 nothing under state law to stop them. You have to
22 allow them to vote." Now, is that -- under current
23 law could that have happened?

24 MR. SHORTER: Under current law as it is
25 written, that could have happened, yes, sir.

1 SEN. FRASER: Okay. Let's carry it a
2 step further. Let's assume there's an unscrupulous
3 person that has the address of someone that they know
4 was a registered voter and that person has passed
5 away. Let me back up and ask the question.

6 My understanding is that when someone
7 dies that your office requests death records, and that
8 you now have the ability to try to take people off the
9 roll. Is that correct?

10 MR. SHORTER: Well, Senator, what
11 happens on a weekly basis, the Bureau of Vital
12 Statistics submits to our office their records on
13 deceased individuals, and we forward that information
14 to the counties for that person to be taken off the
15 roll.

16 SEN. FRASER: How long does it take for
17 that data to -- to have the person deceased till you
18 get it and you get them taken off, what is the time
19 lag?

20 MR. SHORTER: Senator, I don't know the
21 exact timeline that it takes, but the challenge that
22 we sometimes have is that the information that is
23 forwarded to our office from vital statistics, there's
24 a lag between the time that we get it and the time the
25 individual sometimes actually has expired.

1 SEN. FRASER: I've been told it's six
2 months. Is that the average time that it takes to
3 remove them off the roll?

4 MR. SHORTER: We do have instances of
5 knowing it has taken six months.

6 SEN. FRASER: Okay. If it took six
7 months and if someone died and if someone sent in a
8 letter of a change of address and said that person
9 just died, asked for a new registration card to be
10 sent to X address and they did that with every one
11 that died during that period, and there were as many
12 as 30 or 40 or 50 of these people and the same
13 address -- request change that went to the same
14 address, do you have the ability or does the County
15 Clerk have the ability to catch that under our current
16 system?

17 MR. SHORTER: If they all went to the
18 same address?

19 SEN. FRASER: If someone sent in a
20 change of address --

21 MR. SHORTER: Yes, sir.

22 SEN. FRASER: -- of a valid voter and
23 said "Send me their registration card and send it to
24 this address" --

25 MR. SHORTER: Yes, sir.

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1 SEN. FRASER: -- and whether it was one
2 or two or ten or thirty or fifty, that they change
3 that address, if someone sends you in a change of
4 address, would you likely send it to that address?

5 MR. SHORTER: Yes, sir, we would.

6 SEN. FRASER: So it's possible that
7 someone could collect, could harvest multiple cards at
8 this address. Hypothetically is it possible they
9 could hand them out to random people that didn't
10 belong to the card, and that person -- the random
11 person could walk in with the fake card and give it to
12 the person at the polling place and vote that card?

13 MR. SHORTER: Hypothetically, yes,
14 Senator.

15 SEN. FRASER: Well, hypothetically if it
16 could happen and someone could do it, we have to
17 assume that somebody has thought about that, and that
18 some of these people that we've heard on these stories
19 of people that were dead that voted multiple times
20 possibly that could have been what happened. Is that
21 correct?

22 MR. SHORTER: Yes, sir.

23 SEN. FRASER: Okay. If Senate Bill 362
24 was in place and that person that stole that
25 identification or stole the card or the Troy Fraser

1 that was voting Steve Fraser's card, if they had to
2 come in and show either a photo ID proving who they
3 were or they had other means of identification that
4 they would have to show, would that not give us a lot
5 better chance of identifying that that person is
6 fraudulently voting?

7 MR. SHORTER: Yes, sir, if you could
8 verify that.

9 SEN. FRASER: Okay. Well, let's change
10 this for a second. I have the -- your voter
11 registration card here in front of me. I know it
12 looks like it's got a lot of spaces for things to fill
13 out, but down at the bottom it's got a place to fill
14 in your driver's license number, and there's another
15 place that says your social security card number.

16 MR. SHORTER: Yes, sir.

17 SEN. FRASER: The data that I received
18 from you it looked like that because of motor voter
19 we're receiving about -- I think the number is
20 somewhere in the high 80s. You know, 75 to 80 percent
21 of people right now are using their driver's license
22 number. There is a smaller number, you know, 10,
23 15 percent uses a social security number, but there
24 were a number of people -- I think there were 3,700
25 people in Texas last year -- 37,000 people in Texas

1 last year that used neither. They said "I don't have
2 a driver's license. I don't have a social security
3 card," and they turned this in.

4 Now, if they turn this in to the
5 Secretary of State or to the registrar in Houston, the
6 guy that was just up, once they do that, would this be
7 processed, and will they be issued -- even though they
8 have no forms of identification, they don't give you a
9 driver's license number or a social security card, all
10 they gave you was just a blank card, will they be
11 issued a voter registration card?

12 MR. SHORTER: Senator, they will be
13 issued a voter registration card if they sign the
14 affirmation statement at the bottom.

15 SEN. FRASER: If they sign the bottom
16 saying "I'm who I say I am" on the bottom, they send
17 this in, they're going to get a registration card?

18 MR. SHORTER: That is correct.

19 SEN. FRASER: Okay. But I also
20 understand that when they go to vote there's going to
21 be a flag on that, and when they come in they've got
22 to show something to prove that they are who just
23 signed up. Is that correct?

24 MR. SHORTER: Yes, sir, they will have
25 to --

1 SEN. FRASER: Okay. But you also -- if
2 I understood the person from Houston, is that when
3 they fill this out, they mail them a notice that
4 they're going to have to provide some kind of
5 identification. And if they took that letter that
6 they just mailed them in and said "Here is my proof of
7 identification. They just mailed this to me,"
8 basically they could game the system by showing no
9 identification, mail it to the address, take that as
10 their form of identification, and they could use --
11 and let me give you kind of a ridiculous case. But if
12 I filled this out as Mickey Mouse and it was 103
13 Lighthouse Drive and I sent it in, would you send me a
14 card for Mickey Mouse?

15 MR. SHORTER: You would get a card,
16 Senator, if you have a -- have signed the affirmation.

17 SEN. FRASER: If I sign the bottom of
18 it, you're going to send me a card for Mickey Mouse.
19 Okay. Now I've got a registration card that says
20 Mickey Mouse. I'm going to walk in to my precinct
21 with that card, and you've also sent me a notice
22 saying I've got to show other identification. I take
23 the letter you just mailed me, walk in to my polling
24 place, I lay down my Mickey Mouse card, I also lay
25 down the letter you just mailed me, if I give them

1 that, are they going to allow me to vote?

2 MR. SHORTER: If you're using that
3 letter -- if we're talking about the letter from the
4 government agency, it will be counted as a form of
5 identification.

6 SEN. FRASER: Okay. So if someone is
7 unscrupulous and they know how to do this, let's say
8 some random group like ACORN that decided they wanted
9 to try to use something to register people to try to
10 get a card and to game the system and then to go in
11 and vote and falsify that vote by not giving the
12 proper identification, the scenario that I just laid
13 out, is that possible under current law?

14 MR. SHORTER: It is possible, Senator.

15 SEN. FRASER: Okay. In the this last
16 election cycle -- and I'm sorry. I'm not going to ask
17 you that question there. We should have asked the
18 registrar because of the people that voted late in
19 this last election cycle I have been told that they
20 suspected thousands and thousands of that scenario
21 that I just suggested.

22 But if I took that Mickey Mouse voter ID
23 and I laid it in front of the person, would the person
24 say "Thank you, Mr. Mouse. Here is your card," and
25 they would allow me to vote? Is that not correct?

1 MR. SHORTER: Theoretically, Senator,
2 that -- that could happen.

3 SEN. FRASER: Okay. So I guess what I'm
4 trying to establish with you is that it sounds like
5 today if I want to game the system and I want to
6 cheat, it's very difficult for either the Secretary of
7 the State or that election clerk or that election
8 judge to identify that I'm cheating and know for sure.
9 Is that correct? Especially if I'm voting in Houston
0 or Dallas or someplace where they have no reason to
1 know who I am, is it difficult -- would you say that
2 it is difficult for them to identify, to determine for
3 sure, that that person representing themselves as Mickey
4 Mouse really is Mickey Mouse?

15 MR. SHORTER: Senator, I would say that
16 there may be -- they may have an opportunity to
17 identify it. However, to do something about it based
18 on what is currently in statute would be difficult.

19 SEN. FRASER: Okay. Well, actually that
20 was the next question. It's difficult to identify,
21 but it sounds like it's even more difficult to proceed
22 to prosecute because if you can't identify it, you
23 don't have the authority to ask them questions to
24 prove who they are. And even if you think you know
25 that it's the wrong person, if you accuse them of